

United States
Circuit Court of Appeals

For the Ninth Circuit.

JAMES A. RUSSELL,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court of the Western District of Washington,
Northern Division.

FILED
DEC 24 1920
F. D. MONCKTON,
CLERK.

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Circuit Court of Appeals
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Counsel.

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J. L. FINCH, Esq., Attorney for Plaintiff in Error,
416 L. C. Smith Building, Seattle, Washington.

ROBT. C. SAUNDERS, Esq., Attorney for Defendant in Error,

310 Federal Building, Seattle, Washington.

[1*]

United States District Court, Western District of
Washington, Northern Division.

November Term, 1919.

No. 5260.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. A. RUSSELL,

Defendant.

Indictment.

The United States of America,
Western District of Washington,
Northern Division,—ss.

The grand jurors of the United States of America
being duly selected, impaneled, sworn and charged to

*Page-number appearing at foot of page of original certified Transcript
of Record.

inquire within and for the Northern Division of the Western District of Washington, upon their oaths present:

COUNT I.

That J. A. RUSSELL (whose true Christian name is to these grand jurors unknown), on the thirteenth day of January, in the year of our Lord, one thousand nine hundred and twenty, in the city of Seattle, County of King, in the Northern Division of the Western District of Washington, and within the jurisdiction of the United States District Court, then and there being, with intent to defraud one Julius Taylor, unlawfully did then and there falsely assume and pretend to be an officer and employee acting under the authority of the said United States, to wit, a revenue officer and employee, and in such pretended character did fraudulently demand and obtain from him, the said Julius Taylor, a sum of money, to wit, the sum of Eighty dollars (\$80); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [2]

COUNT II.

And the grand jurors aforesaid, on their oaths aforesaid, do further present:

That J. A. RUSSELL (whose true Christian name is to these grand jurors unknown), hereinafter called the defendant, on the twenty-first day of March, in the year of our Lord, one thousand nine hundred and twenty, at the County of Snohomish, in the Northern Division of the Western District of Washington, and within the jurisdiction of the

United States District Court, then and there being, did then and there knowingly, wilfully, unlawfully, falsely and feloniously assume and pretend that he the said defendant then and there was an officer and employee acting under the authority of the United States and of the Department of Internal Revenue thereof, to wit, a revenue officer for the District of Washington, and in said pretended character of officer and employee as aforesaid he, the said defendant, with intent to defraud the United States, did then and there demand his immediate release from arrest then and there made and effected upon his body by one, to wit, William G. Vest, a duly appointed, qualified and acting federal prohibition agent of the United States for the State of Washington, for a violation of the National Prohibition Act then and there being perpetrated by the said defendant, J. A. Russell; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

ROBT. C. SAUNDERS.

United States Attorney.

[Indorsed]: Indictment for Violation Sec. 32, P. C. A True Bill. E. Shorrocks, Foreman Grand Jury. Presented to the Court by the Foreman of the Grand Jury in open court, in the presence of the Grand Jury and filed in the U. S. District Court, April 28, 1920. F. M. Harshberger, Clerk. [3]

United States District Court, Western District of
Washington, Northern Division.

No. 5260.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

J. A. RUSSELL,
Defendant.

Arraignment.

Now, on this 3d day of May, 1920, into open court comes the said defendant, J. A. Russell, for arraignment, accompanied by his counsel Walter Schaffner, and answers that his true name is James A. Russell, whereupon the charge is read to him and he here and now is given two weeks to plead.

Journal 8, Page 253. [4]

United States District Court, Western District of
Washington, Northern Division.

No. 5260.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

J. A. RUSSELL,
Defendant.

Plea.

Now on this 7th day of June, 1920, into open court

comes the said defendant, J. A. Russell, and here and now enters his plea of not guilty to the charges herein against him.

Journal 8, page 328. [5]

United States District Court, Western District of
Washington, Northern Division.

No. 5260.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES A. RUSSELL,

Defendant.

Trial.

Now, on this 22d day of June, 1920, this cause comes on for trial and defendant, James A. Russell, is in court with his attorney, J. L. Finch. F. R. Conway is counsel for the Government. The Government announced that it elected to proceed with the trial of this cause on Count I. The defendant moves for dismissal of Count II but this motion is denied and exception allowed. The following jurors were examined, sworn and empanelled: William H. Silliman, John A. Pedersen, O. H. Halleson, Leander Miller, H. A. Eckas, Samuel H. Poynor, Ruel A. Russell, Willard O. Palmer, Henry A. Schaub, J. O. Strehlau, V. L. Elson and E. E. Rhodes. Statement to jury for the Government was made by Asst. U. S. Attorney Conway. Julius Taylor,

Henry V. Hanson and C. C. Klingel were examined and sworn as witnesses for the Government and Exhibit 1 introduced, at which time the Government rests. The defendant moves for a directed verdict on ground of insufficiency of Government's evidence, but this motion was denied. Statement to jury for defendant was made by J. L. Finch, and James A. Russell was examined and sworn as defendant's witness, at which time the defendant rests. The cause was argued to jury by both sides and the jury was instructed by the Court and retired for deliberation. The jury came into court at 2:10 P. M. and returned verdict of guilty on Count I, the defendant and attorneys for both sides being present. The verdict reads as follows: "We, the jury, in the above-entitled cause, find the defendant James A. Russell is [6] guilty as charged in Count I of the indictment herein. W. H. Silliman, Foreman." The verdict was ordered filed. Final disposition of case was continued until June 29, 1920. The jury was discharged from further consideration of the case.

Journal 8, page 361. [7]

In the District Court of the United States for the
Western District of Washington.

No. 5260.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES A. RUSSELL,

Defendant.

Verdict.

We, the jury in the above-entitled cause, find the
defendant, James A. Russell, is guilty as charged
in Count I of the indictment herein.

W. H. SILLIMAN,

Foreman.

[Endorsed]: Verdict. Filed in the United States
District Court, Western District of Washington,
Northern Division. June 22, 1920. F. M. Harsh-
berger, Clerk. By S. E. Leitch, Deputy. [8]

United States District Court, Western District of
Washington, Northern Division.

No. 5260.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. A. RUSSELL,

Defendant.

Motion for New Trial.

COMES NOW the defendant in the above-entitled cause, J. A. Russell, by John F. Dore, his attorney, and moves the Court for an order setting aside the verdict of the jury heretofore rendered herein, and granting to defendant a new trial, for the reasons and upon the grounds:

- a. The verdict is contrary to the law of the case.
- b. The verdict is not supported by any evidence in the case.
- c. The Court upon the trial of the case, admitted incompetent evidence offered by the United States.
- d. The Court erred in refusing to direct a verdict of Not Guilty at the close of the Government's evidence.
- e. The Court erred in refusing to direct a verdict of Not Guilty at the close of all the evidence.

Dated this 28th day of June, 1920.

JOHN F. DORE,
Attorney for Defendant.

[Endorsed]: Motion for New Trial. Filed in the United States District Court, Western District of Washington, Northern Division. June 29, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [9]

United States District Court, Western District of
Washington, Northern Division.

No. 5260.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES A. RUSSELL,

Defendant.

Hearing on Motion for New Trial.

Now, on this 7th day of July, 1920, a motion was made for a new trial. This motion was argued and same was denied. The Government moves for judgment and sentence. Statement is made by attorneys. The defendant is sentenced at this time.

Journal 8, page 378. [10]

United States District Court, Western District of
Washington, Northern Division.

No. 5260.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES A. RUSSELL,

Defendant.

Sentence.

Now, on this 7th day of July, 1920, comes the defendant, James A. Russell, into open court for

sentence, and being informed by the Court of the indictment returned against him in this cause and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, he nothing says save as before he hath said. Wherefore, by reason of the law and the premises, it is **CONSIDERED, ORDERED and ADJUDGED** by the Court that the defendant is guilty of violation of Section 32, Penal Code, and that he be sentenced to be imprisoned in the King County Jail or in such other prison as may be hereafter provided for the confinement of persons convicted of offenses against the laws of the United States for the period of three months, from and after this date, or until he shall be otherwise discharged by law, and defendant is now remanded into the custody of the U. S. Marshal to carry this sentence into execution.

Judgment and Decree Book No. 2, page 517. [11]

United States District Court, Western District of
Washington, Northern Division.

No. 5260.

UNITED STATES OF AMERICA,
Plaintiff,
vs.
J. A. RUSSELL,
Defendant.

Petition for Writ of Error.

In the Above-entitled Court and to the Honorable
EDWARD E. CUSHMAN, Judge Thereof:

COMES NOW the above-named defendant J. A. Russell, and by his attorney and counsel, respectfully shows that on the 22d day of June, 1920, a jury impanelled in the above-entitled court and cause, returned a verdict finding the defendant above named guilty of the charge in Count I of the indictment contained, which indictment was theretofore filed in the above-entitled court and cause, and thereafter, and within the time limited by law, under rules and order of this Court, said defendant moved for a new trial, which said motion was by the Court overruled and exception thereto allowed; and likewise within said time filed his motion for arrest of judgment, and which was by the Court overruled and to which an exception was allowed; and thereafter, on the 29th day of June, 1920, said defendant was, by order and judgment and sentence of the above-entitled court, in said cause, sentenced to serve a term of three months in the King County, Washington, jail.

And your petitioner, feeling himself aggrieved by this verdict and the judgment and sentence of the Court, entered herein as aforesaid, and by the orders and rulings of this Court, and proceedings in said cause, now herewith petitions this Court for an order allowing him to prosecute a writ of error from said judgment and sentence to the Circuit Court of Appeals of the United States for the Ninth

Circuit, under the laws of the United States, and in accordance with the [12] procedure of said Court made and provided, to the end that said proceedings as herein recited, and as more fully set forth in the assignment of errors presented herein, may be reviewed and manifest error appearing upon the face of the record of said proceedings, and upon the trial of said cause, may be by the Circuit Court of Appeals corrected, and for that purpose a writ of error thereon should issue as by law and the rulings of the Court provided, and wherefore, premises considered, your petitioner prays that a writ of error issue to the end that said proceedings of the District Court of the United States for the Western District of Washington, may be reviewed and corrected, said errors in said record being herewith assigned and presented herewith, and that pending the final termination of said writ of error by said Appellate Court, an order may be entered herein that all further proceedings be suspended and stayed, and that pending such final determination, said defendant be admitted to bail.

JOHN F. DORE,

Attorney for Petitioner J. A. Russell,

Plaintiff in Error.

Acceptance of service of within petition for writ of error acknowledged this 7th day of July, 1920.

ROBT. C. SAUNDERS,

Attorney for Plaintiff.

By E. D. DUTTON.

[Indorsed]: Petition for Writ of Error. Filed in the United States District Court, Western District

of Washington, Northern Division. July 7, 1920.
F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [13]

United States District Court, Western District of
Washington, Northern Division.

No. 5260.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. A. RUSSELL,

Defendant.

Assignment of Errors.

COMES NOW the above-named defendant, J. A. Russell, and in connection with his petition for writ of error in this case submitted and filed herewith, assign the following errors which the defendant avers and says occurred in the proceedings and at the trial in the above-entitled cause, and in the above-entitled court, and upon which he relies to reverse, set aside and correct the judgment and sentence entered herein, and says that there is manifest error appearing upon the face of the record, and in the proceedings, in this:

1. The defendant, at the close of the Government's evidence, moved the Court to direct the jury to return a verdict of not guilty, which motion was denied by the Court, and to which ruling the defendant then and there excepted, for the reason and upon the ground that no crime, misdemeanor

or offense, under the laws or statutes of the United States had been proven against the defendant, and because the offense charged in the indictment had not been proven; which exception was by the Court allowed; and now the defendant assigns as error the ruling of the Court upon the said motion.

2. The defendant again, at the close of all the evidence in the case, moved the Court to direct the jury to return a verdict of not guilty, which motion was denied by the Court, and to which ruling the defendant [14] then and there excepted, for the reason and upon the ground that no crime, misdemeanor or offense, under the law or statutes of the United States had been proven against the defendant, and because the offense charged in the indictment had not been proven, which exception was by the Court allowed; and now the defendant assigns as error the ruling of the Court upon the said motion.

3. Thereafter, and within the time limited by law, and the orders and rules of the Court, the defendant moved the Court for an order setting aside the verdict of the jury and granting to him a new trial, which motion was denied by the Court, to which ruling of the Court the defendant then and there duly excepted, and the exception was by the Court allowed; and now the defendant assigns as error the ruling of the Court upon the said motion.

4. The Court thereafter entered judgment and sentence against said defendant upon the verdict of guilty rendered upon the said indictment, Count One thereof, to which ruling and judgment and sen-

tence the defendant excepted, which exception was by the Court allowed; and now the defendant assigns as error that the Court so entered judgment and sentence upon said verdict.

And as to each and every assignment of error, as aforesaid, the defendant says that at the time of making of the order or ruling of the Court complained of, the defendant duly asked and was allowed an exception to the ruling and order of the Court.

JOHN F. DORE,

Attorney for Defendant.

Acceptance of service of within Assignment of Errors acknowledged this 7th day of July, 1920.

ROBT. C. SAUNDERS,

Attorney for Plaintiff.

By E. D. DUTTON.

[Endorsed]: Assignment of Errors. Filed in the United States District Court, Western District of Washington, Northern Division. July 7, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.
[15]

United States District Court, Western District of
Washington, Northern Division.

No. 5260.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. A. RUSSELL,

Defendant.

**Order Allowing Writ of Error and Fixing Amount
of Supersedeas Bond.**

A writ of error is granted herein this 7th day of July, 1920, and it is further

ORDERED, that said defendant J. A. Russell be admitted to bail, and that the amount of a supersedeas bond to be filed by said defendant be fixed in the sum of \$2,000.00; and it is further

ORDERED, that upon said defendant J. A. Russell filing his bond in the aforesaid sum in due form, to be approved by the clerk of this Court, he shall be released from custody pending the determination of the writ of error herein assigned.

Done in open court, this 7th day of July, 1920.

EDWARD E. CUSHMAN,

Judge.

Acceptance of service of within order allowing writ acknowledged this 7th day of July, 1920.

ROBT. C. SAUNDERS,

Attorney for Plaintiff.

By E. D. DUTTON.

[Endorsed]: Order Allowing Writ of Error and Fixing Amount of Supersedeas Bond. Filed in the United States District Court, Western District of Washington, Northern Division. July 7, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.
[16]

United States District Court, Western District of
Washington, Northern Division.

No. 5260.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. A. RUSSELL,

Defendant.

Supersedeas Bond.

KNOW ALL MEN BY THESE PRESENTS:
That we, J. A. Russell, as principal, and William Halloran and E. Zuleika Halloran, husband and wife, and Harry Cannon and Ruby Cannon, husband and wife, all of Seattle, King County, Washington, as sureties, are held and firmly bound unto the United States of America, plaintiff in the above-entitled action, in the penal sum of Two Thousand Dollars (\$2,000.00), lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our and each of our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas the above-named defendant, J. A. Russell, was on the 7th day of July, 1920, sentenced in the above-entitled cause to serve a period of three months' imprisonment in the county jail of King County, Washington;

And, whereas, the said defendant has sued out a writ of error from the sentence and judgment in

said cause to the Circuit Court of Appeals of the United States for the Ninth Circuit;

And, whereas, the above-entitled court has fixed the defendant's bond, to stay execution of the judgment in said cause, in the sum of Two Thousand Dollars (\$2,000);

Now, therefore, if the said defendant, J. A. Russell, shall [17] diligently prosecute his said writ of error to effect, and shall obey and abide by and render himself amenable to all orders which said Appellate Court shall make, or order to be made, in the premises, and shall render himself amenable to and obey all process issued, or ordered to be issued, by said Appellate Court herein, and shall perform any judgment made or entered herein by said Appellate Court, including the payment of any judgment on appeal, and shall not leave the jurisdiction of this court without leave being first had, and shall obey and abide by and render himself amenable to any and all orders made or entered by the District Court of the United States for the Western District of Washington, Northern Division, and will render himself amenable to and obey any and all orders issued herein by said District Court, and shall pursuant to any order issued by said District Court surrender himself and obey and perform any judgment entered herein by the said Circuit Court of Appeals or the said District Court, then this obligation to be void; otherwise to remain in full force and effect.

Sealed with our seals and dated this 8th day of July, 1920.

J. A. RUSSELL. (Seal)

WM. HALLORAN. (Seal)

E. ZULEIKA HALLORAN. (Seal)

HARRY CANNON. (Seal)

RUBY CANNON. (Seal)

W. H. TUCKER. [18]

LIST OF REAL ESTATE.

Lots 5 & 6, Blk. 24, Madison St. Add.	\$ 4,500.00	Free and above.
" 6, " 2, Burgert's "	1,500.00	" "
" 8, 9 & 10, " 87, Collins' "	5,000.00	" "
" 7 & 8, " 400, Seattle Tide Lands	7,500.00	Assets \$1,500.00
" 1 to 4, " 7, Seashore Park	3,000.00	f. & c.
5 Acres Vashon Island (Pt. Lot 2, Sec. 29-26-3 E.)	2,000.00	f. & c.
<hr/>		
\$23,500.00		

United States of America,
State of Washington,
County of King,—ss.

William Halloran and E. Zuleika Halloran, husband and wife, and Harry Cannon and Ruby Cannon, his wife, and W. H. Tucker, a widower, being first duly sworn, each for himself and herself and not for the other, on oath, says:

I am a resident of the State of Washington, over the age of twenty-one years, and not an attorney or counselor at law, sheriff, clerk of the Superior Court or other office of such court, or of any court; that I am worth, over and above all debts and liabilities, and exclusive of property exempt from execution, in real estate situate within King County, State of Washington, as follows: William Halloran

and E. Zuleika Halloran, husband and wife,
\$4,000.00, and Harry Cannon and Ruby Cannon,
\$4,000.00, and W. H. Tucker, a widower, \$4,000.00.

WM. HALLORAN.

E. ZULIKA HALLORAN.

HARRY CANNON.

RUBY CANNON.

W. H. TUCKER.

O. K.—N. W.

O. K.—ROBT. C. SAUNDERS,

U. S. Dist. Atty.

Subscribed and sworn to before me this 8th day
of July, 1920.

[Seal]

I. H. WARREN,

Notary Public in and for the State of Washington,
Residing at Seattle.

Approved July 8th, 1920.

EDWARD E. CUSHMAN,

Judge. [19]

[Endorsed]: Supersedeas Bond. Filed in the
United States District Court, Western District of
Washington, Northern Division. July 8, 1920. F.
M. Harshberger, Clerk. By S. E. Leitch, Deputy.
[20]

United States District Court, Western District of
Washington, Northern Division.

No. 5260.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. A. RUSSELL,

Defendant.

**Order Extending Time to and Including July 31,
1920, to File Bill of Exceptions.**

For good cause now shown, it is

ORDERED that the time within which the defendant shall serve and file his proposed bill of exceptions in the above-entitled cause be and the same hereby is extended to and including the 31st day of July, 1920.

FRANK H. RUDKIN,

United States District Judge.

O. K.—F. R. CONWAY,

Assistant U. S. Attorney.

[Endorsed]: Order Extending Time to File Bill of Exceptions. Filed in the United States District Court, Western District of Washington, Northern Division. July 17, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [21]

United States District Court, Western District of
Washington, Northern Division.

No. 5260.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. A. RUSSELL,

Defendant.

Bill of Exceptions.

BE IT REMEMBERED, that on the 22d day of June, 1920, at the hour of ten o'clock, A. M., the above-entitled cause came regularly on for trial in the above-entitled court, before the Honorable Edward E. Cushman, Judge thereof, the plaintiff appearing by F. R. Conway, Assistant United States Attorney for said District, and the defendant, J. A. Russell, being present in court, and represented by his counsel, John F. Dore and J. L. Finch.

Whereupon the following proceedings were had:

Mr. CONWAY.—If your Honor please, there are two counts in this indictment. At this time the Government elects to proceed on the first count only on this trial.

The COURT.—Do you move a dismissal of the other?

Mr. CONWAY.—No, your Honor.

Mr. FINCH.—At this time, your Honor, the defendant asks for a dismissal of the second count in this indictment, the Government having elected to

proceed under the first, and I also ask it for the reason that there is no crime charged in it.

The COURT.—Do you resist it?

Mr. CONWAY.—Yes, your Honor, I do resist it. I don't have to go to trial on both counts in this indictment unless I want to.

The COURT.—Is the defendant on bail?

Mr. FINCH.—Yes, your Honor.

The COURT.—Motion denied. [22]

Mr. FINCH.—Note an exception.

The COURT.—Exception allowed.

Thereafter a jury was regularly and duly impanelled and sworn to try said cause, and the United States Attorney having made his opening statement, the following proceedings were had:

Testimony of Julius Taylor, for the Government.

JULIUS TAYLOR, produced as a witness on behalf of the *the* Government, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. CONWAY.)

My name is Julius Taylor. On the 13th of last January I was living at the Normandie Apartments in the city of Seattle. Henry V. Hanson was living with me. I think I saw the defendant there at that time. Hanson was at home at the same time. The defendant came there about 7:45 in the evening of Tuesday, January 13, 1920. I was doing some lodge work that I had to perform on account of having a meeting on the following evening, and I answered the door, and on opening the door there were two gentle-

(Testimony of Julius Taylor.)

men on the outside. One of them looked in and says: "Well, you have company." I says, "No, not much." They stepped back, and the defendant pulled his coat back; that was all I wanted to see. He had a star on, and he says: "We are from the Federal Government." That is the man who pulled back his coat. (Pointing to defendant.)

Q. Examine that badge. I will ask the clerk to identify that as Government's Exhibit 1, and testify whether you recognize it.

A. I can't say that I do, because I didn't pay much attention to it. I didn't examine the badge particularly. It was fastened on defendant's vest under his coat. The defendant [23] came in and he says, "I understand that you have ten cases of liquor." I says, "If I have, you may go and examine it and I will help you look for it." I says, "Go inside and look around and see if you can find it, and I will help you look for it." He came in; Mr. Hanson was in the other part of the apartment. I took the defendant and the other man into our dining-room. There the defendant asked if I had any liquor. I said, "I don't think I have to answer that question." The defendant said to his companion, "You search this place and I will search the other place." I told him we had no liquor in the apartment. He says, "You have some place that you store your stuff." I says, "Yes, we have a storeroom downstairs on the second floor."

The defendant left the other man with me and went to the part of the apartment where Hanson

(Testimony of Julius Taylor.)

was, and that is all I saw of him until he came back later. While he was gone the other man and I got kind of chummy, seeing that he had an Elk pin on, I thought he was a pretty good Bill and I says: "Where do you belong, Bill?" He said, "I belong to 92." I pulled out my card, thinking he would do likewise, but he didn't. We got to talking and I says, "What is it going to cost me to get out of this?" He says: "Don't do anything that is going to hurt yourself, because the party I am with is a pretty good fellow, and I think we can get along,"—as much as to intimate that a little bit of change might fix up matters, so when the defendant came back after making the search and says, "Let's go," I says, "All right." I says, "I would like to stave this off until Thursday morning, because on Wednesday night I have a very important lodge meeting, the installation of officers at the lodge," and I told about being an officer and having to be there, and says, "If you boys hold this off until Thursday morning, I will go down with you." [24] We got to talking back and forth and finally I pulled out my pocketbook and I opened it something on this order (indicating it), and I put my hand inside, and I threw a little piece of change on the table. I says: "If this is going to do you boys any good, we will call this thing square." One of them said, "Will the people in the other part of the house know anything about this?" and I says, "No." I believe it was the other man who said that; I won't be sure. All I was thinking about was this: Wednesday night

(Testimony of Julius Taylor.)

was lodge night, and I didn't want to miss it. They bid me goodnight and beat it, picking up the money. That gentleman (pointing to defendant) picked the money up. It was \$80.00. I threw out \$95.00 first, but pulled \$15.00 back. The money was United States currency.

Cross-examination.

(By Mr. FINCH.)

I run a tailor-shop in the Hoge Building. I never saw either of the two men before. I did not say in my direct examination that I thought I saw the defendant at my apartment.

Mr. FINCH.—Mr. Stenographer, will you turn back to that testimony?

(Stenographer reads former testimony.)

“This is the first time I have seen the defendant since that night, but I believe, I am sure, that he is the same man; he had an overcoat on at the time. I have never seen the other man since that night, and don't know him or where he is.”

Q. Now, what was said or done at the door?

A. They opened the door, and the shorter one of the two looked inside and saw Mr. Hanson there and says: “You have company,” and with that he walked back a piece and he pulled his coat back and said, “We are from the Federal Government.” The defendant is the man who said that. [25]

Q. Those were his words, “We are from the Federal Government?” A. Yes.

When inside, the men only talked about liquor;

neither of them asked for any money. Nothing was said about money at the door. The man designated as "Bill" is the man that I talked with about money. It was getting along about eight-thirty or half to nine, and I said: "If it is going to cost me any money and I have to get a pile, I want to know how much I should get, because I have some pretty good friends in this town, and I thought it would be pretty late to get them after nine o'clock. He said, "Don't do anything that you should not do, because the man I am with is a pretty good sort of a fellow, and I think we can fix matters up without going to that bother."

That left an opening for me to know just about what he meant. The defendant was not present when the talk about the money occurred. I did not take advantage of the opening on the spot, but waited until the defendant returned. When the defendant came back, he did not say anything about money, but pretty soon I pulled some money out of my pocket and threw it down on the table. I did that absolutely of my own motion, and in doing so I said that there was a piece of change if it would do any good, and the men picked the money up and went away. [26]

Testimony of Henry V. Hanson, for the Government.

HENRY V. HANSON, produced as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. CONWAY.)

I was living at the Normandie Apartments on the 13th of last January. Mr. Taylor occupied the apartment with me. I saw the defendant there at that time. Mr. Taylor and I were in the room when the door-bell rang. Taylor answered the bell. A few minutes later they came in and went into the other room. A few minutes later the defendant came into the room that I was sitting in and pulled back his coat and says, "I am a Federal man." He searched the room and went out into the other room. Then the phone rang and I answered the phone. Then I heard him say to Taylor, "Where is your liquor?" Taylor says, "We have no liquor." Then he said, "We have a baggage-room," and defendant says, "I want to go down there." I took the defendant to the baggage-room. He found the trunks that belonged to our apartments, opened them, looked in them, and finally we came back to the apartment. He went into the room where Taylor was, and I went into the other room, and that is all there was to it. I did not go into the room where Taylor and the defendant was, and did not see the defendant any more. I did not see the other man at all. I saw the defendant afterwards on the

(Testimony of Henry V. Hanson.)

street. He was pointed out to me. I stood in front of the Mecca one day, and the fellow I was talking with said the defendant was in the Meadowdale affair. And I said, "He is the same fellow that visited us." Then I had a talk with him the other day. There wasn't much said, but he said he guessed he was up against it, and walked away up the street. I don't remember who spoke first. I was going up Union Street and he was coming down. I believe he called to me, if I remember, tapped me on the shoulder. I really don't remember what I said to him. He said he was up against it, and I passed some word off to him. I don't remember what I said to him. It was only a minute in passing by, and I went up the street. There was nothing said about the trial of this case, or about my testifying against him, or being easy on him—not a thing. [27]

Cross-examination.

(By Mr. FINCH.)

It was about a month after the occurrence at the apartment that the defendant was pointed out to me on the street. I did not talk with him at that time. Up here at the Federal building I was asked to identify that badge. Mr. Saunders asked me to identify it.

Q. Didn't they offer you Russell's badge, and ask you if you could identify it as the badge that the man who had called out there at the house?"

A. "I believe they did."

Testimony of C. C. Klingel, for the Government.

C. C. KLINGEL, produced as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. CONWAY.)

I can identify Government's Exhibit 1. I first saw it at Meadowdale, Washington, on the 22d day of March of this year. It was in possession of Prohibition Agent William C. Vest. He had taken it away from Mr. Russell. Mr. Vest handed me the badge, and in the presence of Mr. Russell told me that Mr. Russell had stuck it out to him at the time he was arrested, and had said, "See, see, Government Revenue Inspector, United States Navy Department." Russell did not deny it.

By Mr. CONWAY.—"I offer in evidence Government's Identification '1.' "

The COURT.—"It may be admitted."

Cross-examination.

(By Mr. FINCH.) [28]

I did not hear Russell say, "See, see," etc. Mr. Vest told me that is what Russell said.

Redirect Examination.

(By Mr. CONWAY.)

Q. "Captain Klingel, can you testify as to whether on the 13th of January last, the defendant was in the employ of the Federal Government?"

A. "Only what he told me himself. He told me

(Testimony of C. C. Klingel.)

he was employed as Inspector over at the Navy Yard."

I was the Federal Prohibition Agent in charge for the State of Washington. I was familiar with the Federal employees connected with the enforcement of the liquor laws. The defendant was not such an employee.

Whereupon the Government rested.

Whereupon the defendant challenged the sufficiency of the Government's evidence, and moved the Court to instruct the jury to return a verdict of not guilty, for the reason and upon the ground that the offense charged in the indictment had not been proven, and no sufficient evidence thereof had been introduced to warrant giving the case to the jury. This motion was denied. Whereupon the defendant duly excepted to the ruling of the Court, and his exception was by the Court allowed.

Thereupon, the defendant's opening statement to the jury having been made by his counsel, the following testimony was introduced on behalf of the defense:

Testimony of James A. Russell, in His Own Behalf.

JAMES A. RUSSELL, the defendant, produced as a witness in his own behalf, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. FINCH.)

I am the defendant. I heard the testimony of the witnesses Taylor and Hanson. I was not at their apartment on the 13th of January last. I know

(Testimony of James A. Russell.)

nothing of the occurrence they testified about. I did not get \$80.00 [29] or any other sum from Mr. Taylor. I did not represent to him, or to Mr. Hanson, that I was a Government officer of any character. I recognize the badge shown me, Government's Exhibit 1. It is a construction and repair department badge of the United States Navy, and is issued to all timber inspectors as recognition in visiting from mill to mill, and I act in that capacity when they need an extra timber inspector, and that is a badge I have worn for the past three years. I have been in the employ of the Government continuously for the past four years, and am so employed at the present moment, and that is my badge of authority, issued by the Government and the Government knows I have it. I parted with it on the morning of the 21st or 22d of March of this year, at Meadowdale, Washington. We were driving from Meadowdale to Seattle with some liquor in our machine when Mr. Vest and some revenue officers stopped us and told us to hold up our hands and get out of the machine, which I did. I said to Mr. Vest, "Who are you, and where is your authority?" He said, "You keep your hands in the air, or I will shoot." I said, "There is no use of that talk; all we want to know is to see your identity, who you are." And I put my hand in here and unloosened the badge, and I says, "I work for the Government, and they furnish me with a badge, and if you do you will have one, too." He took my badge, looked at it, and says, "That is an old badge;

(Testimony of James A. Russell.)

it is out of date." I says, "It is not." I told him it is a construction and repair department of the Navy Yard, that my name was Russell, and that I was employed at Bremerton. He put the badge in his pocket, and later I was arrested on this charge of impersonating an officer. I heard the witness Hanson testify about meeting me on the street. I think he did pass me on the street at the newsstand one day. I remember saying that I was up against it. I referred to the Meadowdale affair, and since that conversation I came into this court and pleaded guilty to my participation in that affair. That is what I referred to in saying I was up against it. [30]

Cross-examination.

(By Mr. CONWAY.)

I never became acquainted with Mr. Hanson. I never talked with him, except on the occasion at the newsstand. I never saw Mr. Taylor until today.

Thereupon the defense rested.

Thereupon the Government rested.

Thereupon the defendant renewed the motion made at the close of the Government's case, for the reasons then given, and for the further reason that the Government had offered no rebuttal. This motion was denied, to which ruling of the Court the defendant then and there excepted, and his exception was by the Court allowed.

Argument of counsel to the jury being had, the Court thereupon instructed the jury as to the law in the premises, to which no exceptions were taken.

Whereupon the jury retired to deliberate upon their verdict.

Thereafter on the same day the said jury returned into court and rendered their verdict finding the defendant guilty upon the first count of the indictment.

Thereafter the defendant duly filed his written motion now on file herein praying that the verdict of the jury be set aside and a new trial granted him. [31]

Thereafter on the 7th day of July, 1920, the said motion came duly on for hearing before the Court, and after argument of counsel the Court denied said motion, to which ruling of the Court the defendant excepted, and his exception was by the Court allowed.

Whereupon the Court did pronounce sentence upon said defendant that he be imprisoned in the county jail of King County, Washington, for the period of three months.

And, now, in furtherance of justice, and that right may be done, the said defendant, James A. Russell, tenders and presents to the Court the foregoing as his bill of exceptions in the above-entitled cause, and prays that the same may be settled and allowed and signed and sealed by the Court and made a part of the record in this case.

JOHN F. DORE,

J. L. FINCH,

Attorneys for Defendant.

Service of copy hereof hereby acknowledged this 31st day of July, 1920.

F. R. CONWAY,

Assistant United States Attorney. [32]

The defendant, J. A. Russell, having tendered and presented the foregoing as his bill of exceptions in this cause to the action of the Court, and in furtherance of justice and that right may be done him, and having prayed that the same may be settled and allowed, authenticated, signed and sealed by the Court, and made a part of the record herein, and the Court having considered said bill of exceptions, and all objections and proposed amendments made thereto by the Government, and being now fully advised, does now in furtherance of justice and that right may be done the defendant, sign, seal, settle and allow said bill of exceptions as the bill of exceptions in this cause, and does order that the same be made a part of the record herein.

The Court further certifies that each and all of the exceptions taken by the defendant, as shown in said bill of exceptions, were at the time same were taken, allowed by the Court.

The Court further certifies that said bill of exceptions contains all material matters and evidence material to each and every assignment of error made by the defendant and tendered and filed in Court in this cause with said bill of exceptions.

The Court further certifies that said bill of exceptions was filed and presented to the Court within the time provided by law, as extended by the orders of the Court heretofore made herein.

Done and ordered in open court, counsel for the Government and the defendant being now present, this 18th day of October, 1920.

EDWARD E. CUSHMAN,

Judge.

[Indorsed]: Bill of Exceptions Lodged in the United States District Court, Western District of Washington, Northern Division. July 31, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.

[Indorsed]: Bill of Exceptions. Filed in the United States District Court, Western District of Washington, Northern Division. Oct. 18, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [33]

United States District Court, Western District of
Washington, Northern Division.

No. 5260.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. A. RUSSELL,

Defendant.

Praeceptum for Transcript of Record.

To the Clerk of the Above-entitled Court:

You will please make a transcript of record on appeal to the Circuit Court of Appeals of the Ninth Circuit, in the above-entitled cause, and include therein the following:

Indictment.

Arraignment.

Plea.

....

Record for trial and impanelling jury.

Verdict.

Motion for new trial.

Hearing on motion for new trial.

Judgment and sentence.

Petition for writ of error.

Assignment of error.

Order allowing writ of error.

Supersedeas.

Order extending time for filing bill of exceptions.

Bill of exceptions.

Order extending time to file record.

Order extending time to file record.

Stipulation extending time to file record.

Order settling bill of exceptions.

Writ of error.

Citation.

Defendant's praecipe.

JOHN F. DORE,

Attorney for Defendant. [34]

We waive the provisions of the Act approved February 13, 1911, and direct that you forward type-written transcript to the Circuit Court of Appeals for printing as provided under Rule 105 of this Court.

JOHN F. DORE,

J. L. FINCH,

Attorneys for Defendant.

[Indorsed]: Praeceptum for Transcript of Record. Filed in the United States District Court, Western District of Washington, Northern Division. Oct. 12, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [35]

United States District Court, Western District of
Washington, Northern Division.

No. 5260.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES A. RUSSELL,

Defendant.

**Certificate of Clerk U. S. District Court to Transcript
of Record.**

United States of America,
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the United States District Court, for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 35, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the clerk of said District Court, and that the same constitute the record on return

to said writ of error herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the plaintiff in error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [36]

Clerk's fee (Sec. 828, R. S. U. S.) for making record, certificate or return, 77 folios at 15¢.	\$11.55
Certificate of Clerk to transcript of record— 4 folios at 15¢.60
Seal to said Certificate.20
Certificate of Clerk to original exhibit.	45
Seal to said Certificate.20

I hereby certify that the above cost for preparing and certifying record amounting to \$13.00 has been paid to me by attorneys for plaintiff in error.

I further certify that I hereto attach and herewith transmit the original writ of error and original citation issued in this cause, together with original Government's Exhibit 1.

IN WITNESS WHEREOF I have hereto set my hand and affixed the seal of said District Court at

Seattle, in said District, this 8th day of November, 1920.

[Seal]

F. M. HARSHBERGER,
Clerk U. S. District Court. [37]

In the District Court of the United States, Western
District of Washington, Northern Division.

No. 5260.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. A. RUSSELL,

Defendant.

Writ of Error.

The United States of America,—ss.

The President of the United States of America, to the
Honorable Judges of the District Court of the
United States for the Western District of Wash-
ington, Northern Division, GREETING:

Because in the record and proceedings, as also in
the rendition of the judgment of a plea which is in
said District Court, before the Honorable Edward E.
Cushman, between J. A. Russell, the plaintiff in
error, and the United States of America, the defend-
ant in error, a manifest error hath happened to the
prejudice and great damage of J. A. Russell, plaintiff
in error, as by his complaint and petition herein
appears, and we being willing that error, if any hath
been, should be duly corrected, and full and speedy
justice done to the party aforesaid in this behalf,

DO COMMAND YOU, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, State of California, together with this writ, so that you have the same at said City of San Francisco within thirty days from the date hereof, in said Circuit Court of Appeals to be then and there held, that the record and proceedings aforesaid being then and there inspected, said United States Circuit Court of Appeals may cause further to be done therein to correct the error what of right, and according to the laws and customs of the United States of America should be done in the premises. [38]

WITNESS the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the United States, this 7th day of July, 1920, and the year of the Independence of the United States, one hundred and forty-third.

[Seal]

F. M. HARSHBERGER,

Clerk of the District Court of the United States for the Western District of Washington, Northern Division. [39]

Acceptance of service of within writ of error, acknowledged this 7th day of July, 1920.

ROBT. C. SAUNDERS,

Attorney for Plaintiff,

By E. D. DUTTON. [40]

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. July 7, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.

United States District Court, Western District of
Washington, Northern Division.

No. 5260.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. A. RUSSELL,

Defendant.

Citation on Writ of Error.

United States of America,—ss.

The President of the United States of America, to the
United States of America, and to ROBERT
C. SAUNDERS, United States Attorney for the
Western District of Washington, Northern Division, GREETING:

You are hereby cited and admonished to be and
appear before the United States Circuit Court of
Appeals for the Ninth Circuit at San Francisco, in the
State of California, within thirty days from the date
hereof, pursuant to a writ of error filed in the clerk's
office of the District Court of the United States for
the Western District of Washington, Northern Division,
wherein J. A. Russell is plaintiff in error, and the United
States of America is defendant in error, to show cause,
if any there be, why judgment in the said writ of error
mentioned should not be corrected and speedy justice
should not be done to the party in that behalf.

WITNESS, the Honorable EDWARD CUSHMAN, Judge of the District Court of the United States for the Western District of Washington, Northern Division, this 7th day of July, 1920.

EDWARD E. CUSHMAN,
United States District Judge.

[Seal] Attest: F. M. HARSHBERGER, Clerk
of the District Court of the United States, for
the Western District of Washington. Northern
Division. [41]

Acceptance of service of within Citation on Writ
of Error acknowledged this 7th day of July, 1920.

ROBT. C. SAUNDERS,
Attorney for Plaintiff.

By E. D. DUTTON. [42]

[Endorsed]: Filed in the United States District
Court, Western District of Washington, Northern
Division. July 7, 1920. F. M. Harshberger, Clerk.
By S. E. Leitch, Deputy.

[Endorsed]: No. 3598. United States Circuit
Court of Appeals for the Ninth Circuit. James A.
Russell, Plaintiff in Error, vs. The United States of
America, Defendant in Error. Transcript of Rec-
ord. Upon Writ of Error to the United States Dis-
trict Court of the Western District of Washington,
Northern Division.

Filed November 12, 1920.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

United States District Court, Western District of
Washington, Northern Division.

No. 5260.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. A. RUSSELL,

Defendant.

**Order Extending Time to and Including November
18, 1920, to File Record and Docket Cause.**

For good cause now shown, it is

ORDERED, that the time within which defendant shall make, serve and file his record in the above-entitled cause, in the Circuit Court of Appeals, be and the same is hereby extended to and including the 18th day of November, 1920.

Done in open court this 18 day of October, 1920.

EDWARD E. CUSHMAN,

United States District Judge.

O. K.—ROBT. C. SAUNDERS,

United States Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Oct. 18, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.

United States District Court, Western District of
Washington, Northern Division.

No. 5260.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. A. RUSSELL,

Defendant.

**Order Extending Time to and Including October 20,
1920, to File Record and Docket Cause.**

For good cause now shown, it is

ORDERED, that the time for filing the record in
the above-entitled cause in the office of the clerk of
the Circuit Court of Appeals be and the same hereby
is extended to October 20th, 1920.

Done in open court, this 20th day of September,
1920.

JEREMIAH NETERER,

United States District Judge.

O. K.—F. R. CONWAY,

Asst. U. S. Atty.

[Endorsed]: Filed in the United States District
Court, Western District of Washington, Northern
Division. Sep. 20, 1920. F. M. Harshberger, Clerk.
By S. E. Leitch, Deputy.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

No. 5260.

J. A. RUSSELL,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

**Order Extending Time Sixty Days from August 6,
1920, to File Record and Docket Cause.**

For good cause shown, it is

ORDERED that the time for filing the record in the above-entitled cause in the office of the clerk of the above-entitled court be and the same is hereby extended for sixty (60) days from the 6th day of August, 1920.

Done in the open court, this 4th day of August, 1920.

JEREMIAH NETERER,

United States District Judge.

O. K.—F. R. CONWAY,

Asst. United States District Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Aug. 4, 1920. F. M. Harshberger, Clerk. By ———, Deputy.

No. 3598. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Subdivision 1 of Rule 16, Enlarging Time to and Including ———, 1920, to File Record and Docket Cause. Filed Nov. 12, 1920. F. D. Monekton, Clerk.